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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )

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)  
Amendment of Section 73.202  
of the Commission's Rules )  
Table of Allotments )  
For FM Broadcast Stations )  
(Oswego and Granby, NY) )

RM-9953

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 00-169

To: Chief, Allocations Branch

**REPLY COMMENTS OF CRAM COMMUNICATIONS, LLC**

Cram Communications, LLC ("Cram"), licensee of WVOA(FM),  
Channel 286, DeRuyter, New York, by its attorneys, hereby submits these reply  
comments (the "Reply Comments") in support of a site restriction on (or,  
alternatively, a set of alternate reference coordinates for) the allotment proposed in  
the above-captioned proceeding in order to enable additional broadcast service to  
hundreds of thousands of more people while allowing the licensee of WTKV(FM),  
Oswego, New York, to bring an initial local aural transmission service to Granby,  
New York. 1/

On August 1, 2000, Galaxy Communications, L.P. ("Galaxy"), the  
licensee of WTKV(FM), filed a petition for rule making (the "Petition"), which asked  
the Commission to adopt the following (collectively, the "Proposal"): (a) to delete

1/ This submission is timely filed pursuant to the reply comment deadline  
established in the Commission's Notice of Proposed Rule Making in this proceeding,  
which was released on September 15, 2000 (the "Notice").

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Channel 288A from Oswego, New York; (b) to add Channel 288A to Granby, New York; and (c) to modify the license of WTKV(FM) to specify operations on Channel 288A in Granby, New York, in lieu of operation on Channel 288A in Oswego, New York. Galaxy asserted that the Proposal would "result in a preferential arrangement of allotments" based on the Commission's allotment priorities, as it would bring the community of Granby its first local aural transmission service and increase overall broadcast service in the region. <sup>2/</sup> (With regard to the latter, the Proposal would result in a net service gain of 132,516 persons, with a total service loss of 2,230 persons.) Galaxy then submitted comments reiterating its support of the proposed change on November 6, 2000 ("Galaxy Comments").

Also on November 6, 2000, Cram submitted the following:

- (1) a construction permit application to modify the facilities of WVOA(FM), DeRuyter, New York (Facility ID No. 22134), FCC File No. BPH-20001106ABG (the "Application"); and
- (2) comments in this proceeding to subject the Proposal to a minor site restriction (collectively with the Application, the "Counterproposal"). <sup>3/</sup>

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<sup>2/</sup> See Notice at ¶ 3. As the Initial Comments and Notice describe, the Commission's well-established allotment criteria rank allotment proposals in the following order of priority, of which only the last -- other public interest factors -- is implicated with respect to any comparison of the Proposal and Counterproposal, as both would enable Granby to receive a first transmission service. See, e.g., Report and Order, *Amendment of Section 73.202(b) (Lockport and Amherst, New York)*, 14 FCC Rcd 15438 (Allocations 1999) (approving proposal that would result in larger net service gain when other priorities were inconclusive).

<sup>3/</sup> As a point of clarification, Cram recognizes that, under Commission precedent, its request for a site restriction (or, alternatively, a change in the allotment's reference coordinates) is not, strictly speaking, a counterproposal, as it does not propose an alternate arrangement of allotments. See, e.g., Report and

In the Counterproposal, Cram detailed the substantial public interest benefits that would result if the Commission modified the Proposal to include a very minor – roughly 4 kilometer – site restriction (or alternate reference coordinates that would have a comparable effect) so that the Application could be granted. Any fair comparison of Cram's detailed public interest showing to that of the Proposal demonstrates that the Commission should adopt the Counterproposal.

On the one hand, if only the Proposal was adopted and implemented, WTKV(FM) would be able to change its community of license to Granby and would be able to increase service to roughly 134,746 persons, with a service loss of 2,230 persons, for a net gain of roughly 132,500 persons. WTKV(FM) also would be able to reduce an existing short-spacing (the contour overlap related to which occurs primarily over the waters of Lake Ontario) to Canadian allotment Channel 289B, Kingston, Ontario. 4/

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Order, *Amendment of Section 73.202(b) (Kerman, California)*, 11 FCC Rcd 2887, n.2 (Allocations, 1996). Cram used such nomenclature in order to ensure that its pleading notified all parties that Cram was requesting a material change to the Proposal. See, e.g., Report and Order, *Amendment of Section 73.202(b) (Banks, Redmond, Sunriver and Corvallis, Oregon)*, 13 FCC Rcd 6596 (Allocations, 1998) (noting that an application filed by the comment date in allotment proceeding was "functionally equivalent" to counterproposal). However, the fact that Cram's proposal is not an "official" counterproposal should make it even easier for the Commission to adopt it, as Cram's solution would enable both parties to attain their stated primary objectives: Galaxy would be able to bring a new service to Granby, and Cram would be able to increase the population served by WVOA(FM)'s signal (and the collective population served by both WTKV(FM) and WVOA(FM)). See also Report and Order, *Amendment of Section 73.202(b) (Arcadia, Ellington & Marble Hill, Missouri, et al.)*, 13 FCC Rcd 17906 (¶ 6) (1998) (issuing allotment with site restriction to remove conflict between proposals to improve service).

4/ See Galaxy Comments at 2.

On the other hand, if all elements of the Counterproposal, including the Application, were adopted and implemented as Cram intends, each of the following public interest benefits would result:

1. WTKV(FM) would be able to change its community of license to become Granby's first aural local transmission service;
2. WTKV(FM) would be able to increase its net service population by more than 70,000 persons;
3. WTKV(FM) would be able to reduce, although not eliminate, a short spacing to a Canadian allotment on Channel 289B, Kingston, Ontario;
4. WVOA(FM) would be able to increase its net service population by more than 190,000 persons;
5. WVOA(FM) would be able to eliminate four existing short-spacings (to WNGZ(FM), Montour Falls, New York; WGKR(FM), Grand Gorge, New York; WKPQ(FM), Hornell, New York; and WMRV-FM, Endicott, New York);
6. WVOA(FM) would be able to reduce mutual interference with WILQ(FM), Williamsport, Pennsylvania, and significantly reduce any short-spacing with that station; and
7. WVOA(FM) and WTKV(FM) would be able to implement changes that, collectively, would increase service to roughly 265,000 persons, or more than twice as many persons as would receive additional service under Galaxy's initial Proposal.

Further consideration of the two proposals confirms that the Commission should adopt Cram's Counterproposal. Simply stated, any benefit resulting from the Proposal likewise may be attained (or exceeded) by implementation of all aspects of the Counterproposal. Both proposals enable WTKV(FM) to become Granby's first aural transmission service. Both enable the reduction of an international short spacing. And both the Proposal and Counterproposal increase the net population within the 1 mV/m contours of each of

the relevant stations. Only the Counterproposal, however, also enables the elimination of four U.S. short-spacings, the reduction of mutual interference with a Pennsylvania radio station, and a collective net service increase of more than 265,000 persons, as well as potential future service benefits to stations that are currently short-spaced with WVOA(FM). That such substantial public interest benefits are unique to the Counterproposal underscores that it should be the proposal ultimately adopted by the Commission.

Moreover, as set forth in the Comments, the Counterproposal is entirely consistent with Commission precedent. There is no question that elimination of several U.S. short-spacings serves the public interest, especially when such elimination also could result in future service improvements. <sup>5/</sup> Nor is there any question that, in these circumstances, modifications that enable a net increase in the total population served by particular radio stations serve the public, even if the modifications requires certain minor disruptions to the stations' existing service areas. <sup>6/</sup> Finally, it is well-established that the Commission will modify a

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<sup>5/</sup> See Report and Order, *Amendment of Section 73.202(b) (Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville, and Social Circle, Georgia)*, 15 FCC Rcd 9971 (Allocations, 2000) (holding that "elimination of two existing short-spacings to be compelling factors" in favor of allotment proposal).

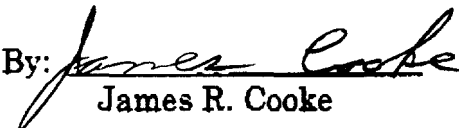
<sup>6/</sup> See, e.g., Report and Order, *Amendment of Section 73.202(b) (Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville, and Social Circle, Georgia)*, 15 FCC Rcd 9971 (2000) (approving proposal that would bring first local transmission service to new community, eliminate short spacings, and increase net service even though it would cause more than 17,000 persons to receive four aural services and roughly 10,000 persons to receive three or fewer); Report and Order, *Amendment of Section 73.202(b)(Healdton and Krum, Texas)*, 14 FCC Rcd 3932 (¶4) (Allocations, 1999) (finding loss of fourth service to 22 persons and loss of fifth service to 3,762 persons outweighed by public interest benefit of providing

proposed change in the Table of Allotments so as not to bar a construction permit application that is on file with the Commission prior to the end of the allotment proceeding's comment period. 7/

Accordingly, and in light of the substantial public interest benefits of the Counterproposal and the weight of relevant Commission precedent, Cram hereby urges the Commission to adopt its proposed allotment reference coordinates of 43° 18' 26" N.L. and 76° 27' 23" W.L. (or, alternatively a site restriction on the allotment that accomplishes the same result), so as to enable provision of a first aural transmission service to Granby *and* grant of the Application.

Respectfully submitted,

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November 21, 2000

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additional service to 39,256 persons). Moreover, under the Counterproposal, more than 96.3 percent of WVOA(FM)'s "loss" population (and all of WTKV(FM)'s loss population) would remain well-served, and the remainder would have access to four aural services. *See Report and Order, Amendment of Section 73.202(b) (Johnstown and Altamont, New York)*, 13 FCC Rcd 12463 (¶ 3) (Allocation, 1998) (approving allotment change in which 96 percent of loss population would remain well-served).

7/ *See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992), *recon. granted in part and denied in part*, 8 FCC Rcd 4743 (¶ 21) (1993).

## CERTIFICATE OF SERVICE

I hereby certify that, on this 21<sup>st</sup> day of November, I have caused a copy of the foregoing Reply Comments to be delivered, by first-class mail, to the following:

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